

REMARKS

Applicants submit the following remarks in response to the Official Action mailed October 31, 2005.

CLAIM REJECTION 35 U.S.C. §103(a)

Claims 1-35 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,575,792 to *Errico, et al.* in view of U.S. Patent No. 6,368, to *Le Couedic, et al.* Independent claims 1, 12, 25 and 35 all include a similar recitation regarding a connector having a seat integrally formed therewith. In addition, the claims include a recitation directed to placing a force against this seat to thereby cause a deformable portion of the connector to deform and thereby clamp on the head of a bone anchor such as a bone fastener. Thus, the claims of the present application specifically state that a force is applied to a portion of the connector which subsequently causes an additional portion of the connector to deform.

The Examiner asserts that *Errico* discloses a connector having a first inwardly deformable housing 402 adapted to receive the head and with a second portion 422, the second portion having a U-shaped opening having an open end remote from the first end of the inwardly deformable portion and a seat 421 integrally formed with the connector. The Examiner asserts that this is shown in FIG. 10 of *Errico*. In reviewing FIG. 10 of *Errico*, it can be seen that element 421 to which the Examiner refers to as a "seat" has no effect on causing a lower portion 402 of the coupling element in *Errico* to deform. In addition, unless the Applicants are mistaken, element 421 of FIG. 10 is never even called out in a detailed description for how the coupling element is employed. This bolters Applicants' assertion that the "seat" 421 has nothing to do with the

deforming of the connector. However, *Errico* does specifically state that as the rod 250 is driven downward, this motion forces the locking ring 330 to translate downward along the lower portion 402 of the coupling element 400. (Col. 11, lns. 25-30) Further, *Errico* goes on to state that "by descending along the tapered lower portion 402 of the element, the locking ring 330 provides an inwardly directed deflecting force which causes the slots 420 in the lower portion 402 of the element [coupling element] to narrow so that the ring may proceed downward. This deflection inward causes the inner surface 418 of the interior chamber to crush lock against the head 304 of the body 300." (Col. 11, lns. 29-36) Thus, *Errico* is specifically stating that the rod contacts the locking ring 330 and not the connector element. And as shown in FIG. 10 of *Errico*, this refers to element 333 of the locking ring 330. Thus, the rod never exerts a force against a portion of the connector to thereby cause a different portion of the connector to deform. Again, as explicitly stated in *Errico*, it is the locking ring, a different and distinct element which causes a portion of the coupling element, a second different and distinct element to deform. Thus, in combining *Errico* and *Le Couedic*, one cannot eliminate the locking ring of *Errico* in order to try to read the references on the claims of the present application. *Errico* is specifically stating that two elements are required to employ the device and therefore one cannot be eliminated while still allowing the device to work. Thus, Applicants assert that the claims of the present application should be deemed to be in condition for allowance and patentable.

The Examiner is also asserting that *Errico* does not teach the clamping means as included within the claims of the present application, but that *Le Couedic* does teach the clamping means. When defining what the clamping means are in the claims in the present application, one must look to the specification.

Clearly, the Applicants are referring to the integral seat or portion of the connector. Although *Le Couedic* may have an integral seat or portion of the connector which causes a second portion of the connector to deform, *Le Couedic* does not have a U-shaped opening, nor does it allow a multi-axial connection as included within the claims of the present application. Thus, Applicants once again assert that the Examiner is trying to piece together portions of *Errico* and *Le Couedic* to read on the claims of the present application without reading in the rest of the references which teach away from the present application. Therefore, Applicants once again assert that the claims of the present application are in condition for allowance and should be deemed patentable.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he/she telephone applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: March 31, 2006

Respectfully submitted,

By 

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